

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2830 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
1 & 2 YES; 3 to 5 NO

DANGS ZILLA PANCHAYAT KARMACH-ARI MANDAL, CLASS III,

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2830 of 1986
MR KS JHAVERI for Petitioner No. 1
MR MANISH DAGLI AGP for Respondent No. 1
M/S MG DOSHIT & CO for Respondent No. 2
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CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 18/03/2002

C.A.V. JUDGEMENT

1. This petition under Articles 226 and 227 of the Constitution is filed by a trade union of class III

employees mainly with a prayer to set aside the Resolution dated 6.8.1985 of the Panchayat and Rural Housing Department of the Government of Gujarat, whereby, the amount paid by way of additional remuneration for not going on strike was ordered to be recovered.

2. In June 1985, an agitation for abolition of the roster system had started and many unions of government employees had given calls to strike work. In such situation, to prevent the administration from being paralysed, it was declared by the Resolution dated 6.6.1985 of the General Administration Department that the employees who would continue to discharge their duties disregarding the calls for strike by the union would be entitled to double salary. That Resolution was modified by another Resolution dated 28.6.1985 directing that double payment during the strike-period would be payable to all categories of government staff including panchayat employees and irrespective of whether a strike-call was given by their association or not. The members of the petitioner union are stated to have worked during the period from 7.6.1985 till 26.6.1985. However, by a subsequent Resolution dated 6.8.1985, the Government directed that the panchayat employees were to be entitled to payment of additional remuneration (double payment) from 26.6.1986 and the same would be payable only to those employees who had not joined the strike on or after 26.6.1985. The double payment made with effect from any date earlier than 26.6.1985 was, therefore, required to be recovered. That Resolution was issued after careful consideration of the fact that the panchayat employees had, pursuant to the call for strike, actually went on strike from 26.6.1985. Therefore, presumably, there was no justification for making double payment for any period prior to 26.6.1985. Being aggrieved by the latter Resolution and the proposed recovery of the additional payment, the petitioner approached this Court alleging violation of Articles 14 and 16 of the Constitution and discrimination insofar as class IV employees whose unions never gave a call for strike were paid double wages with effect from 7.6.1985. It is also alleged that certain employees who were not members of any registered trade union were also given the benefit of double payment with effect from 7.6.1985. And the panchayat employees who had been sent on deputation to the Government were also saved from the recovery. Thus, the impugned Resolution and the action of recovery were assailed on the basis of the doctrine of equality and promissory estoppel.

3. By filing an affidavit-in-reply of the Under Secretary, Panchayat Housing and Rural Development

Department, it was submitted that the very idea and purpose of directing double payment during the period of strike was to prevent those employees from going on strike whose respective association or union had given a call to strike work. As a matter of fact, the petitioner union had not given a call for strike for the period between 7.6.1985 to 25.6.1985 and their association gave such call only with effect from 26.6.1985 and hence there could be no question of granting the benefit of double payment when, in any case, the members of the petitioner were not going to strike work, according to the submission.

4. The issue arising in this petition has been dealt with by this Court (Coram: G.T.Nanavati, J. as His Lordship then was) in Special Civil Application No.5011 of 1985. The Court has dismissed the petition for similar relief with the observation that:

"...Obviously, therefore, the benefit was to be given only to the panchayat employees who actually went on strike. As mentioned in the subsequent resolution dated 6.8.85 the panchayat employees actually went on strike on 26.6.85. Obviously, therefore, they did not become entitled to receive double payment before that date. Thus there is no substance in the only point raised before me and therefore this petition is rejected. Notice is discharged. Ad interim relief vacated."

5. In the context of additional challenge to the legality of the Resolution dated 6.8.1985 itself, it has to be seen whether the Government could have legally modified the earlier Resolution extending the benefit of double payment even to employees whose unions might not have given a call for strike. It must be noted that the earlier Resolution dated 28.6.1985 clearly extended the benefit irrespective of a call for strike 'during the period of strike'. That Resolution was not expressly given any retrospective effect but being in modification of the instructions contained in the Resolution dated 6.8.1985, it has to be read in the context of the earlier instructions dated 6.8.1985. The gist of the relevant instruction No.2 of the Circular dated 6.8.1985 is that those employees who would remain on duty 'during the period of strike' shall be entitled to additional payment. The class of employees who would be entitled to such additional payment was restricted to that whose union had given a call for strike. That restriction was removed by the subsequent Resolution dated 28.6.1985.

But apparent essential purpose of making double payment that remained was to reward those employees who would remain on duty even during the period of strike. In such circumstances, if there was no strike and not even a call for strike prior to 26.6.1985, there was no question of rewarding the employee for not going on strike. Therefore, it cannot be said that the Government reneged on its promise by issuing the subsequent Resolution dated 6.8.1985 restricting double payment for the period subsequent to 26.6.1985 and ordering recovery of the excess payment made in respect of the earlier period. The factual premises of the other contentions of discrimination among different classes of employees is generally denied on behalf of the respondent.

6. On careful consideration of the Circular dated 6.8.1985 and the two subsequent Resolutions, it clearly appears that the relaxation of restriction contained in Resolution dated 28.6.1985 was misunderstood to also mean that panchayat employees were entitled to double payment from 7.6.1985 with or without a strike or a call for strike. In fact, such gratuitous benefit was neither intended nor required to be inferred either from the Circular dated 6.6.1985 or from the Resolution dated 28.6.1985 issued to extend the benefit even to the employees whose unions had not given a call for strike. Therefore, the Resolution dated 6.8.1985 is held to be neither unfair nor illegal and the same being upheld, as a necessary consequence, the recoveries of excess payment in respect of the period from 7.6.1985 to 26.6.1985 have to be effected.

7. In the result, the petition is rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)